



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 14, 2008

Ms. Katie Lentz  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2008-14079

Dear Ms. Lentz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#324588.

The Williamson County Sheriff's Office (the "sheriff") received a request for thirteen categories of information relating to a named Deputy Sheriff and K-9.<sup>1</sup> You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note that the requestor has agreed to the redaction of social security numbers, Texas driver's license numbers, Texas license plate numbers, and vehicle identification numbers. Accordingly, any of this information within the submitted documents is not

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<sup>1</sup>You also inform us that the requestor has narrowed his request to limit the time period of the information to July 1, 2006 through July 31, 2007. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

responsive to the instant request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed). Our ruling does not address this non-responsive information, and the sheriff need not release it in response to the request.

The submitted information includes executed search warrants, which are subject to section 552.022 of the Government Code. Section 552.022 provides that information filed with a court is generally a matter of public record that cannot be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Therefore, the sheriff may withhold the executed search warrants only to the extent the information is made confidential under other law. Although the sheriff raises section 552.108 for some of this information, this exception is discretionary and therefore, does not make information confidential. *See Open Records Decision No. 665 at 2 n.5 (2000)* (discretionary exceptions generally). Accordingly, the executed search warrants may not be withheld under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides that juvenile law enforcement records relating to delinquent conduct or conduct in need of supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See Fam. Code § 51.03(a), (b)* (defining "delinquent conduct" or "conduct indicating a need for supervision"). For purposes of 58.007, a "child" is a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *Id.* § 51.02(2). The relevant language of the Family Code under section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

*Id.* § 58.007(c). Upon review, we agree that some of the submitted documents involve juvenile delinquent conduct or conduct in need of supervision, occurring after September 1, 1997. *See id.* § 51.03(a)-(b). Thus, the information you have marked, as well as the information we have marked, is confidential under section 58.007 and must be withheld in its entirety pursuant to section 552.101 of the Government Code.

You argue that a portion of the submitted information is confidential under section 261.201(a) of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information you have marked relates to investigations of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201). Upon review, we find that this information falls within the scope of section 261.201. As you do not indicate that the sheriff has adopted a rule governing the release of this type of information, we assume no such regulation exists. Given that assumption, we conclude that the sheriff must withhold the marked information in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).*

You contend that some of the submitted information is confidential pursuant to the Medical Practice Act (“MPA”), chapter 159 of the Occupations Code, in conjunction with section 552.101. Section 159.002 of the MPA provides, in part:

- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the

information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See* Open Records Decision No. 598 (1991). Medical records may be released only as provided under the MPA. *Id.* You assert that some of the submitted information consists of information taken from medical records that are encompassed by the MPA. However, upon review, we find that none of the submitted information consists of information taken from a medical record for the purposes of the MPA. Thus, the MPA is not applicable to this information, and it may not be withheld on this basis.

We note that the submitted information includes criminal history record information ("CHRI"). Section 552.101 encompasses CHRI generated by the National Crime Information Center or by the Texas Crime Information Center. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that state agencies obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (the "department") maintains, except that the department may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from the department or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Furthermore, any CHRI obtained from the Department or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Therefore, the sheriff must withhold the CHRI that we have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.

We also note that the submitted information includes CRB-3 accident report forms completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* Here, the requestor has not provided the sheriff with two of the required pieces of information for any of the submitted accident report

forms. Thus, the sheriff must withhold the marked CRB-3 accident reports under section 552.101 in conjunction with section 550.065(b) of the Transportation Code.

You argue that some of the remaining information is confidential under common-law privacy. Section 552.101 of the Government Code also encompasses the common-law right of privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found that medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, a compilation of an individual's criminal history has been considered to be highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). However, information relating to routine traffic violations is not excepted from release under section 552.101 in conjunction with common-law privacy. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information). Upon review of the submitted information, with the exception of the information we have marked for release, we find that the sheriff must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy.

Next, you seek to withhold the names of investigating officers, who you state are undercover narcotics officers, under section 552.101 of the Government Code. Information may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You inform us that release of the bracketed information that identifies undercover narcotics officers would "put their lives at risk." Based on this representation and our review, we agree that the sheriff must withhold this information under section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that the some of the remaining offense reports relate to pending criminal investigations and prosecutions. Based upon this representation and our review, we conclude that the release of these documents would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, section 552.108(a)(1) is applicable to this information, which we have marked.

You also claim section 552.108(a)(2) of the Government Code for some of the remaining offense reports. This section excepts from disclosure information concerning a criminal investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state that the submitted information includes reports where no arrests were made, arrests were made but the charges did not result in a conviction or deferred adjudication, or the statute of limitations has expired on the criminal offenses. Upon review, we agree that section 552.108(a)(2) is applicable to this information, which we have marked.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, with the exception of the basic front page offense and arrest information, the marked offense reports may be withheld from disclosure based on sections 552.108(a)(1) and 552.108(a)(2).

In summary, the sheriff must withhold the information marked pursuant to section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. The sheriff must withhold the information marked under section 552.101 in conjunction with section 261.201 of the Family Code. The sheriff must withhold the marked CHRI under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The sheriff must withhold the submitted CRB-3 accident reports under section 552.101 in conjunction with section 550.065 of the Transportation Code. With the exception of the information we have marked for release, the sheriff must withhold the information you have marked, as well as the information we have marked, under section 552.101 in conjunction with common-law privacy. The sheriff must withhold the

information you have marked that identifies undercover peace officers pursuant to section 552.101 of the Government Code in conjunction with the "special circumstances" aspect of common-law privacy. With the exception of basic information, the marked offense reports may be withheld under sections 552.108(a)(1) and 552.108(a)(2). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christina Alvarado  
Assistant Attorney General  
Open Records Division

CA/jb

Ref: ID#324588

Enc. Submitted documents

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